



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,864	03/23/2004	Gerald Mizak		2604
7590		04/19/2005		
GERALD MIZAK 109 G-LONG DR. GARNER, NC 27529			EXAMINER JOHNSON, JERROLD D	
			ART UNIT 3728	PAPER NUMBER

DATE MAILED: 04/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

€

Office Action Summary	Application No.	Applicant(s)	
	10/806,864	MIZAK, GERALD	
	Examiner	Art Unit	
	Jerrold Johnson	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

1. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wewers US 5,244,025 in view of Siegelman US 5,881,883.

Wewers discloses a device for protecting china. As shown in Fig. 2 of his patent, the device comprises sheets of the same dimension positioned evenly on top of one another and secured together through sewing on three sides to thus produce separate pockets into which china is inserted for protection during storage.

Art Unit: 3728

Wewers does not disclose using his invention with Teflon coated skillets, but one of ordinary skill in the art would recognize the applicability of the Wewers device to the similar use of protecting skillets, just as the present application has presented the protection of china as an alternative use. Accordingly, it is determined that the invention of Wewers although not explicitly stating the intended use with Teflon skillets, would inherently possess the capability of being used with Teflon skillets.

Additionally, Wewers does not disclose the use of polyethylene sheets in his invention.

However, Siegelman in Fig. 4a discloses four sheets of polyethylene film fused together along three sides to form four separate pockets. The patent of Siegelman teaches how the concept of Wewers could be produced from materials other than cloth. One of ordinary skill in the art would recognize that the invention of Wewers could be produced from materials other than cloth, and that plastic materials such as polyethylene would provide a way to produce the invention of Wewers in a much less expensive manner.

With regard to the number of pockets, one of ordinary skill in the art would also recognize that the product of Wewers could be manufactured with any number of pockets, as the structure presented in his patent could be replicated with a greater number of the existing elements. Accordingly, even though five pockets are not shown in either Wewers or Siegelman, one of ordinary skill in the art would recognize that it would be obvious to make five or any other number of pockets.

Art Unit: 3728

And, with regard to the functional recitation in the claim of "eliminates the plastic film pockets from buckling and shifting when skillets are either inserted or removed" it is submitted that the device of Wewers once modified with the teachings of Seigelman so as to be constructed of sheets of polyethylene heat fused along three sides would also inherently possess this characteristic.

Finally, the use of "teflon" in the claim is improper, as "teflon" is a trademarked name, and the use of trademarked names in claims is prohibited. The expression "teflon" is properly expressed as polytetrafluoroethylene or PTFE in patent claims.

For these reasons, the invention described in Claim 1 of the present application is not patentable.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerrold Johnson whose telephone number is 571-272-7141. The examiner can normally be reached on 9:30 to 6:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3728

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JDJ



Mickey Yu
Supervisory Patent Examiner
Group 3700